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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

SELECT COMMITTEE ON THE CONSTITUTION (SEVENTY-FIRST AMENDMENT) BILL, 1990 (AMENDMENT OF ARTICLES 81, 82, 170 and 327)—AS PASSED BY THE RAJYA SABHA

COMPOSITION OF THE COMMITTEE

Shri P. R. Kumaramangalam—*Chairman*

MEMBERS

2. Shri Raghunandan Lal Bhatia
3. Shri Buta Singh
4. Shri Chandubhai Deshmukh
5. Shri Jaswant Singh
6. Shri Ramkrishna Kusmaria
7. Prof. (Smt.) Savithiri Lakshmanan
8. Shri Suraj Mandal
9. Shri Arvind Netam
10. Shri Ram Vilas Paswan

11. Shri K. Pradhani
12. Shri S. S. R. Rajendra Kumar
13. Dr. Lal Bahadur Rawal
14. Shri Sudarsan Ray Chaudhuri
15. Shri M. Baga Reddy
16. Shri Vishwa Nath Shastri
17. Shri Sukh Ram
18. Shri Syed Shahabuddin
19. Smt. Chandra Prabha Urs
20. Shri Mukul Balkrishna Wasnik

SECRETARIAT

1. Shri G. L. Batra—*Additional Secretary*
2. Shri S. C. Gupta—*Joint Secretary*
3. Shri R. K. Chatterjee—*Deputy Secretary*
4. Shri Ram Kumar—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri K. L. Mohanpuria, Secretary
2. Shri A. C. C. Unni, Additional Secretary
3. Shri B. S. Saluja, Joint Secretary
4. Shri P. L. Sakarwal, Joint Secretary
5. Shri B. L. Mathuria, Consultant
6. Dr. D. B. Singh, Under Secretary

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* further to amend the Constitution of India *viz.*, the Constitution (Seventy-First Amendment) Bill, 1990 (Amendment of articles 81, 82, 170 and 327), as passed by the Rajya Sabha, was referred, having been authorised to submit the Report on their behalf, present this Report.

2. The motion for reference of the Bill to a Select Committee was moved in Lok Sabha by Shri K. Vijaya Bhaskara Reddy, the then Minister of Law, Justice and Company Affairs, on 7 May, 1992 and was adopted.

3. The Committee held 8 sittings in all.

4. The first sitting of the Committee was held on 26 May, 1992 to consider their future programme of work. At this sitting, the Committee decided that a press communique inviting memoranda on the provisions of the Bill from public bodies, bar councils, bar associations, organisations, associations and individuals etc. by 20 June, 1992, might be issued. The Committee also decided that a circular letter to all the State Governments/Union Territory Administrations and other experts inviting their comments/suggestions on the Bill might also be sent.

5. Accordingly, a press communique inviting memoranda and requests for oral evidence before the Committee was issued on 29 May, 1992. The Director-General, All India Radio and Director-General, Doordarshan, New Delhi were also requested to broadcast the contents of the press communique from all stations of All India Radio/telecast it from all Doordarshan Kendras on three successive days in English and Hindi and in other regional languages.

6. As per decision taken by the Committee, a circular letter inviting memoranda containing suggestions/comments on the provisions of the Bill was also issued to the Chief Secretaries of all the State Governments/Union Territory Administrations and individuals whose names were furnished by the Ministry of Law, Justice and Company Affairs.

7. 24 Memoranda containing comments/suggestions on the provisions of the Bill were received by the Committee from various Associations/Organisations etc.

8. At their sitting held on 23 June and 14 July, 1992, the Committee took oral evidence of Shri S. L. Shakdhar, former Chief Election Commissioner of India, and the representative of the Election Commission of India, the Registrar-General and Census Commissioner of India and the Director-General of the

Section 2, dated 30 May, 1990.

9. The Report of the Committee was to be presented to the House by the last day of the first week in Monsoon Session, 1992. The Committee were granted an extension of time upto the last day of the Winter Session, 1992. Necessary motion to this effect was adopted in Lok Sabha on 9 July, 1992.

*The Bill was published in the Gazette of India, Extraordinary, Part II, section 2, dated 30 May, 1990.

10. The Committee held clause-by-clause consideration of the Bill at their sittings held on 8 and 19 October and 11 November, 1992.

11. At their sitting held on 19 November, 1992, the Committee decided that (i) the evidence tendered before the Committee might be laid on the Table of the House; and (ii) two copies each of Memoranda received by the Committee might be placed in the Parliament Library, after the report had been presented, for reference by the Members of Parliament.

12. The Committee considered and adopted the Report at their sitting held on 19 November, 1992

13. The observations of the Committee with regard to the various provisions of the Bill are detailed in the successive paragraphs.

Clauses 2, 3 and 4—

14. The Committee considered the matters relating to (i) Composition of the House of the People; (ii) Readjustment of constituencies after each Census; (iii) Composition of the Legislative Assemblies; and (i) Power of Parliament to make provisions with respect to elections to Legislatures.

15. The Committee note that the population of the country has increased enormously after the 1971 Census. As per the 1981 Census population figures, the average population in each Parliamentary Constituency in major States is about 12 lacs as against 8.9 lacs on the basis of 1961 Census figures and 10.5 lacs as-per 1971 Census figures. The average is estimated to be around 14 lacs after the decennial Census of 1991 which means roughly a hundred per cent increase of average over the 1951 Census figures per constituency. The growth of population has not been uniform in all areas and, therefore, the size of electorate differs widely from constituency to constituency.

16. The Committee further note the following problems pointed out by the Election Commission:—

(a) Existence of certain villages geographically found as enclaves have been included in certain Assembly constituencies due to inadvertance at the time of last delimitation.

(b) Exclusion on inclusion of certain areas without any rationale in or from certain Assembly constituencies causing hardship to the local people.

(c) the total number of electors overtaking in many cases the total population on the basis of which constituencies were carved out thus disturbing the earlier co-relation between population and electors in a constituency or in a State.

(d) Large scale migration of population from one area to another on various grounds especially in the metropolitan cities and industrial belts creating disparity in the number of electors among the various constituencies.

(e) Certain Scheduled Tribes notified as such in earlier census not found at subsequent census in the same area but still the necessity of allocating seats as per their figures in the earlier census.

(f) Many of the seats reserved for Scheduled Castes in particular have been continuing as such for the last 15 to 20 years causing feelings of frustration not only among the general public in that constituency but also the Scheduled Castes of other constituencies whose claim for reservation has not been met.

17. The Constitution also lays down that the number of seats as allocated and the territorial extent of constituencies as determined on the basis of 1971 census are unalterable until the publication of population figures of the census following the year 2000. Thus, after 1971 and till 2000 as things stand at present, there can be no fresh delimitation of parliamentary and assembly constituencies in the States and Union Territories.

The Committee after examination of all these issues are of the opinion that there is a great need for fresh delimitation of constituencies on the basis of 1991 census. They also feel that the avowed object of the existing constitutional embargo could be fully achieved if the embargo is put only on the total number of Lok Sabha seats allocated to each State and the total number of seats in various State Legislative Assemblies and readjustment of territorial extent of Parliamentary and Assembly constituencies having regard to the fixed number of the seats be allowed and as such delimitation of constituencies may be done on priority basis.

18. The Committee, therefore, feel that Clauses 2, 3 and 4 need not be amended.

Clause 5—

19. Closely related to the delimitation of constituencies is the important question of rotation of seats reserved for the Scheduled Castes. The Committee on Electoral Reforms appointed by the Government have also recommended that seats reserved for the Scheduled Castes may also be rotated on the basis of their population in the constituencies. The Committee are of the view that even under the existing provisions of the Constitution, Parliament has legislative competence to make law for allocation of reserved seats among the various constituencies within a State/Union Territory and as such there is no need to insert specifically such provisions in the Constitution Amendment Bill.

20. The Ministry of Law, Justice and Company Affairs who were asked to tender their opinion in writing, in a written note, however, communicated as follows:—

"Constitutional provisions requiring reservation of seats in favour of Scheduled Castes/Scheduled Tribes in the House of the People and the Legislative Assembly of every State are contained in articles 330 and 332. The number of seats to be reserved in any State or Union Territory is determined in accordance with the norms laid down in clause (2) of article 330 and clause (3) of article 332. The Constitution does not contain any explicit provision regulating the allocation of reserved seats among the Parliamentary and assembly constituencies within a State. However, by virtue of the provisions of articles 330 and 332 read with article 246(1) and Entry 72 of List—I Union List of the Seventh Schedule to the Constitution, Parliament has legislative competence to make law for allocation of reserved seats among the various constituencies within a State/Union Territory.

Section 9 of the Delimitation Act, 1972, *inter alia,* provides that constituencies in which seats are reserved for Scheduled Castes shall be distributed and located, as far as practicable, in areas where the proportion of their population to the total population is comparatively large. Similarly, the constituencies in which the seats are to be reserved for Scheduled Tribes shall be located, as far as practicable, in areas where the proportion of their population to the total population is the largest.

It would thus be seen that, as at present the allocation of reserved seats is made on the basis of larger or largest population as the case may be, under the Parliamentary law. However, in view of the provisions of article 330(1) and 332(1) read with article 246(1) and Entry 72 of the Union List, Parliament would have power to provide for allocation of reserved seats by way of rotation.

However, since there is no explicit constitutional provision enabling Parliament to provide for reservation of seats by way of rotation, schemes of articles 330 and 332 envisage rotation of reserved seats, and also having regard to the provisions in the Constitution (Seventy-second Amendment) Bill, and the Constitution (Seventy-third Amendment) Bill relating to rotation of reserved seats/Chairpersons in Panchayats and Municipalities, it would be advisable to retain clause (5) of the Bill and nothing should be left to any doubt."

21. The Committee, as mentioned in Paragraph 19 above, are of the view that Clause 5 should be omitted since the opinion of the Ministry of Law is that even without amendment of Article 327, Parliament has powers to enact a law to provide for allocation of seats reserved for Scheduled Castes by way of rotation, under the existing provisions of the Constitution. However, the Law Ministry have also mentioned that since there is no explicit constitutional provision enabling Parliament to provide for reservation of seats by way of rotation, it would be advisable to retain Clause 5 of the Bill and nothing should be left to any doubt. The Committee, therefore, leave it to the wisdom of Parliament to decide whether Article 327 needs to be amended as per Clause 5 of the Bill.

Subject to the above observations, the Committee have decided that Clause 5 be omitted.

Clause 1 and Enacting Formula

22. Clause 1 and Enacting Formula have been adopted without any amendment.

23. The Select Committee recommend that the Bill as approved by the Committee be passed.

NEW DELHI;
19 *November,* 1992
28 *Kartika,* 1914 (*Saka*)

P. R. KUMARAMANGALAM,
Chairman,
Select Committee.

MINUTE OF DISSENT

1. The Select Committee report states the following:

"18. The Committee, therefore, feel that Clauses 2, 3 and 4 need not be amended." and

"21.....Subject to the above observations the Committee have decided that Clause 5 be omitted."

2. It is my considered view that the Select Committee has lost a valuable opportunity to examine in depth and clarify the principles of composition of Lok Sabha and the state legislatures, of delimitation of constituencies and of reservation in favour of SC & STs and place them on a sound constitutional and legal foundation.

3. It goes without saying that the strength of the Lok Sabha itself has no logical rationale and that growing population makes a mockery of the the principle of democratic representation. It is also admitted that there is a wide variation in the population|electorate among the Lok Sabha constituencies from one part of the country to another and some times within the same part. This disparity has risen primarily because of the conceptually questionable practice of relating the Lok Sabha constituencies to States|Union Territories & its natural consequencies. This is also partly due to inadequate directive in the Constitution on the principle of delimitation so as to ensure equality among the people in respect of representation in the legislatures. One may argue that these questions are outside the scope of the Bill before the Committee. But these questions which are inter-related and provide the framework within which the scheme of representation, reservation and rotation must function, can not be brushed aside.

4. It is my view that the total number of seats in the Lok Sabha should be revised every 20 years keeping in view the principle of effective representation, and the constituencies should be delimited on the basis of the latest Census; that the total number of seats to be reserved in favour of the SC or ST should also be decided every 10 years on the basis of the latest Census and that the constituencies selected for reservation should be decided on the basis of the principle of equity and fairness so as to ensure, as far as possible, that the largest possible segment of ST|SC population enjoys the benefit of reserved constituencies. One such principle could be that all constituencies in which the percentage of Scheduled Caste or Scheduled Tribe population exceeds the average national percentage must be reserved in order of concentration and, for the balance, if necessary, the constituencies in which the percentage of Scheduled Caste or Scheduled Tribe population falls short of the national average by 1|3 should be rotated in alphabetical order. I admit that there could be other formulations, but the objective must be the same as stated above.

5. Secondly, I generally endorse the view of the Ministry of Law & Justice that clause 5 should be retained so that nothing is left to doubt. However, I dare say that the language of clause 5 is susceptible of improvement. For example, it is imprecise to speak in terms of "rotation of constituencies reserved for the SC"; it would be more precise to speak of "rotation of reservation among the constituencies with a high concentration of the Scheduled Caste".

6. It would also be fair and equitable to exclude such constituencies from the scheme of rotational reservation which have a high concentration of a religious minority. In the existing circumstances, generally speaking, a member of

a religious minority (which does not enjoy either reservation or separate electorate) has a reasonable choice to win only from such a constituency which has a demographic concentration of, say, above 25 per cent. The fact remains that the largest minority in the country has been consistently under-represented in the Lok Sabha and in most state assemblies.

I would request that this Minute of Dissent may kindly be placed on record and included in the report of the Committee.

NEW DELHI;
26 *November*, 1992.

SYED SHAHABUDDIN.

THE CONSTITUTION (SEVENTY-FIRST AMENDMENT) BILL, 1990

(AS REPORTED BY THE SELECT COMMITTEE)

[*Asterisks indicate Omission*]

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Seventieth Amendment) Act, 1992.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 81.

2. In article 81 of the Constitution, in the proviso to clause (*3*), for the words and figures "be construed as a reference to the 1971 census", the following shall be substituted, namely:—

"be construed,—

(*i*) for the purposes of sub-clause (*a*) of clause (*2*), and the proviso to that clause, as a reference to the 1971 census; and

(*ii*) for the purposes of sub-clause (*b*) of clause (*2*), as a reference to the 1991 census ".

Amendment of article 82.

3. In article 82 of the Constitution, in the third proviso, for the words "readjust the allocation of seats in the House of the People to

the States and the division of each State into territorial constituencies under this article", the following shall be substituted, namely:—

"readjust—

(*i*) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and

(*ii*) the division of each State into territorial constituencies as may be readjusted on the basis of the 1991 census,

under this article".

Amendment of article 170.

4. In article 170 of the Constitution,—

(*a*) in clause (2), the proviso to the *Explanation* shall be omitted;

(*b*) in the third proviso to clause (3), for the words "readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause", the following shall be substituted, namely:—

"readjust—

(*i*) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(*ii*) the division of such State into territorial constituencies as may be readjusted on the basis of the 1991 census,

under this article".

* * * * *

C. K. JAIN,
Secretary-General.

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